

**CONTRACT #1**  
**RFS # 331.11-00210**  
**FA # Pending**

**Education**

**VENDOR:**  
**SAS Institute, Inc.**

RECEIVED

NOV 09 2009

FISCAL REVIEW

*(Revised documents)*



STATE OF TENNESSEE  
DEPARTMENT OF EDUCATION  
*Division of Career and Technical Education*

PHIL BREDESEN  
GOVERNOR

6<sup>th</sup> FLOOR, ANDREW JOHNSON TOWER  
710 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243-0383

TIMOTHY K. WEBB, Ed.D.  
COMMISSIONER

TO: Mr. James White, Fiscal Review Committee

FROM: Timothy K. Webb, Commissioner

*Timothy K. Webb*

DATE: October 30, 2009

SUBJECT: Request to appear before Fiscal Review Committee regarding Request for Non-Competitive Contract  
RFS# 33111-00210

Please consider the enclosed information regarding a request for Non-Competitive Contract between the Department of Education and SAS, Inc.

The services procured through this contract are for data analysis, research and reporting of assessment results from the Tennessee Comprehensive Assessment Program (TCAP). We request consideration for a non-competitive contract because Tennessee Code Annotated (TCA) specifically addresses the model for determining and reporting growth in student achievement as well as teacher and school effectiveness. Additionally, state law directs the contractor selection with the provision that the Sanders model be used in several statutes as listed below:

- Tenn. Code Ann. § 49-1-211 – Annual report by commissioner – (a) (2) Value added assessment....
- Tenn. Code Ann. § 49-1-302 – Powers and duties – (d) (1) (D) .... The Sanders model....
- Tenn. Code Ann. § 49-1-601 – Performance goals at the local level – (b) (2) Growth shall be determined through the value added assessment....
- Tenn. Code Ann. § 49-1-602 – Value added assessment system –
- Tenn. Code Ann. § 49-1-604 – Mixed model methodologies – (1) ... Sanders...
- Tenn. Code Ann. § 49-1-607 – Subject matter tests for secondary schools – Initiation of value added assessment –
- Tenn. Code Ann. § 49-1-613 – School Improvement Plan Goals. – (a) ..... on value added assessment....
- Tenn. Code Ann. § 49-2-303 – School principals – (a) (1) .. on value added assessment....
- Tenn. Code Ann. § 49-6-3050 – Home Schools – (a) (2) (b) and (C) (ii)...the Sanders model of value added assessment....

These services are provided to meet Federal reporting requirements of the No Child Left Behind (NCLB) Act as well as Tennessee Code Annotated (TCA). Tennessee has been approved to use the Tennessee Value Added Assessment System as the growth model required for NCLB.

The Department currently has a contract for these services with SAS, Inc. which was also procured through non-competitive contract for the period of January 1, 2005 through December 31, 2009. This contract holds a maximum liability of \$8,958,999.40. The proposed contract for an additional five year period will have a maximum liability of \$9,716,250.00 an increase of only \$757,250.60 which is primarily related to additional web based reporting for teachers and administrators.

Thank you for your consideration.

CC: Mr. Robert Greene  
Mr. Dan Long  
Ms. Deb Malone  
Ms. Kristen McKeever

Fiscal Review Committee

*Contact Name:	Deb Malone	*Contact Phone:	615-532-6298		
*Original Contract Number:	To be assigned by OCR.	*Original RFS Number:	33111-00210		
Edison Contract Number: (if applicable)	000000000000000000 0017457	Edison RFS Number: (if applicable)	33111-00210		
*Original Contract Begin Date:	1/1/10	*Current End Date:	12/31/15		
Current Request Amendment Number: (if applicable)		N/A			
Proposed Amendment Effective Date: (if applicable)		N/A			
*Department Submitting:		Education			
*Division:		Assessment, Evaluation and Research			
*Date Submitted:		November 2, 2009			
*Submitted Within Sixty (60) days:		Yes			
If not, explain:		N/A			
*Contract Vendor Name:		SAS, Inc.			
*Current Maximum Liability:		\$9,716,250.00			
*Current Contract Allocation by Fiscal Year: <b>(as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2010	FY:2011	FY:2012	FY:2013	FY2014	FY2015
\$488,250.00	\$1,943,250	\$1,943,250	\$1,943,250	\$1,943,250	\$1,455,000
*Current Total Expenditures by Fiscal Year of Contract: <b>(attach backup documentation from STARS or FDAS report)</b>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding	State :	\$8,661,250	Federal:	\$1,055,000	

Effective October 30, 2009

Supplemental Documentation Required for  
Fiscal Review Committee

Source/Amount:				
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: (if applicable)		Brief Description of Actions in Previous Amendments or Revisions: (if applicable)		
N/A		N/A		
Method of Original Award: (if applicable)		N/A		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$9.5M		

## Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.**

Deliverable description:	FY:2010	FY:2011	FY:2012	FY:2013	FY:2014	FY:2015
Deliverable 1		\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Deliverable 2		\$15,000	\$15,000	\$15,000	\$15,000	\$15,000
Deliverable 3		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Deliverable 4		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Deliverable 5		\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Deliverable 6		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Deliverable 7		\$15,000	\$15,000	\$15,000	\$15,000	\$15,000
Deliverable 8		\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Deliverable 9		\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Deliverable 10		\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Deliverable 11		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Deliverable 12		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Deliverable 13		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 14		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 15		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 16		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 17		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 18		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 19		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 20		\$15,000	\$15,000	\$15,000	\$15,000	\$15,000
Deliverable 21		\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Deliverable 22		\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Deliverable		\$120,000	\$120,000	\$120,000	\$120,000	\$120,000

Effective October 30, 2009

Supplemental Documentation Required for  
Fiscal Review Committee

23						
Deliverable 24		\$11,000	\$11,000	\$11,000	\$11,000	\$11,000
Deliverable 25		\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
Deliverable 26		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Deliverable 27	\$174,000	\$348,000	\$348,000	\$348,000	\$348,000	\$174,000
Deliverable 28	\$164,250	\$164,250	\$164,250	\$164,250	\$164,250	\$164,250
Deliverable 29	\$150,000	\$300,000	\$300,000	\$300,000	\$300,000	\$150,000
Deliverable 30	\$0	\$0	\$0	\$0	\$0	\$0
<b>Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.</b>						
Deliverable description:	FY:2010	FY:2011	FY:2012	FY:2013	FY:2014	FY:2015
In Kind Services	\$3,322,940	\$3,322,940	\$3,322,940	\$3,322,940	\$3,322,940	\$3,322,940
<b>Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.</b>						
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:	FY:
The services provided through this contract are required in T.C.A. Code stipulates the method by which the calculations are to be done and the model to be used; therefore, these services are procured through non-competitive contract and not other options were reviewed.						

# NON-COMPETITIVE CONTRACT REQUEST

This request is NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

AGENCY REQUEST TRACKING # 33111-00210	
1	<b>PROCURING AGENCY</b> Department of Education
2	<b>SERVICE</b> Research and reporting services related to data analysis of state assessments.
3	<b>APPROVAL CRITERIA</b> (select one) <input type="checkbox"/> non-competitive negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service
4	<b>PROPOSED CONTRACTOR</b> SAS, Inc.
5	<b>CONTRACT BEGIN DATE</b> (attach explanation if < 60 days after F&A receipt) January 1, 2010
6	<b>CONTRACT END DATE</b> (with ALL options to extend exercised) December 15, 2010
7	<b>MAXIMUM CONTRACT COST</b> (with ALL options to extend exercised) \$9,716,250.00
8	<b>SERVICE DESCRIPTION</b> Provide analysis, reporting and research services related to State Assessment data.
9	<b>EXPLANATION OF NEED FOR OR REQUIREMENT PLACED ON THE STATE TO ACQUIRE THE SERVICE</b> The Contractor will provide research and data analysis for assessments required under the Title I requirements of the Elementary and Secondary Education Act of 1965 (ESEA), the Individuals with Disabilities Education Act (IDEA), the No Child Left Behind Act of 2001 (NCLB); Tennessee Code Annotated; and State Board.
10	<b>HAS THE PROCURING AGENCY EVER BOUGHT THE SERVICE BEFORE ?</b> <input checked="" type="checkbox"/> YES or <input type="checkbox"/> NO <b>IF SO, WHAT PROCUREMENT METHOD WAS USED ?</b> Non-Competitive Contract
11	<b>NAME &amp; ADDRESS OF THE CONTRACTOR'S PRINCIPAL OWNER(S)</b> (NOT required for a TN state education institution) SAS Institute, SAS Campus Drive, Cary, NC 27513
12	<b>EVIDENCE OF THE CONTRACTOR'S EXPERIENCE &amp; LENGTH OF EXPERIENCE PROVIDING THE SERVICE</b> The Department of Education has utilized the services of SAS since 1991-1992, when Tennessee Value Added Assessment System (TVAAS) became required by State law.

AGENCY REQUEST TRACKING # 33111-00210

## 13 OFFICE FOR INFORMATION RESOURCES SUPPORT (required for information technology service)

☐ ATTACHED or ☒ NOT APPLICABLE (N/A only to non-information technology service & THDA)

## 14 eHEALTH INITIATIVE SUPPORT (required for health-related professional, pharmaceutical, laboratory, or imaging service)

☐ ATTACHED or ☒ NOT APPLICABLE

## 15 HUMAN RESOURCES SUPPORT (required for state employee training service)

☐ ATTACHED or ☒ NOT APPLICABLE

## 16 DESCRIPTION OF EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES

TDOE has not attempted to find another vendor for this service; TVAAS is based upon a statistical methodology that is owned by SAS.

## 17 JUSTIFICATION FOR NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS

The services procured through this contract are for data analysis, research and reporting of assessment results from the Tennessee Comprehensive Assessment Program (TCAP). We request consideration for a non-competitive contract because state law specifically addresses the model for determining and reporting growth in student achievement as well as teacher and school effectiveness. Additionally, state law directs the contractor selection with the provision that the Sanders model be used in the statutes as listed below:

Tenn. Code Ann. § 49-1-211 – Annual report by commissioner – (a) (2) Value added assessment....

Tenn. Code Ann. § 49-1-302 – Powers and duties – (d) (1) (D) .... The Sanders model....

Tenn. Code Ann. § 49-1-601 – Performance goals at the local level – (b) (2) Growth shall be determined through the value added assessment....

Tenn. Code Ann. § 49-1-602 – Value added assessment system –

Tenn. Code Ann. § 49-1-604 – Mixed model methodologies – (1) ... Sanders...

Tenn. Code Ann. § 49-1-607 – Subject matter tests for secondary schools – Initiation of value added assessment –

Tenn. Code Ann. § 49-1-613 – School Improvement Plan Goals – (a) ..... on value added assessment....

Tenn. Code Ann. § 49-2-303 – School principals – (a) (1) .. on value added assessment....

Tenn. Code Ann. § 49-6-3050 – Home Schools – (a) (2) (b) and (C) (ii)...the Sanders model of value added assessment....

The Dr. William Sanders model as referenced and the Value Added assessment system are proprietary to SAS, Inc. Dr. Sanders continues to be employed by and intricately involved with the work done by SAS. These services are provided to meet Federal reporting requirements of the No Child Left Behind (NCLB) Act as well as Tennessee Code Annotated (TCA). Tennessee has been approved to use the Tennessee Value Added Assessment System as the growth model required for NCLB.

## AGENCY HEAD SIGNATURE &amp; DATE

(MUST be signed & dated by the ACTUAL procuring agency head as detailed on the current Signature Certification on file with OCR— signature by an authorized signatory acceptable only if exigent circumstances documented)

Timothy K. Webb 10/29/09





# C O N T R A C T   S U M M A R Y   S H E E T

<b>RFS Number</b>		33111-00210						
<b>Edison ID</b>		0000000000000000000017457						
<b>Fiscal Year</b>	<b>Department ID</b>	<b>Speedchart Number</b>	<b>Program Code</b>	<b>Account Code</b>	<b>Fund</b>	<b>Project/ Grant Code</b>	<b>CFDA #</b>	<b>Amount</b>
2010	3311101000	ED00000449	873100	70899000	25000			\$488,250
2011	3311101000	ED00000449	873100	70899000	25000			\$1,732,250
2011	3313600000	ED00000039	644000	70899000	25000		84.027	\$11,000
2011	3310300000	ED00000539	847500	70899000	25000		84.369	\$200,000
2012	3311101000	ED00000449	873100	70899000	25000			\$1,732,250
2012	3313600000	ED00000039	644000	70899000	25000		84.027	\$11,000
2012	3310300000	ED00000539	847500	70899000	25000		84.369	\$200,000
2013	3311101000	ED00000449	873100	70899000	25000			\$1,732,250
2013	3313600000	ED00000039	644000	70899000	25000		84.027	\$11,000
2013	3310300000	ED00000539	847500	70899000	25000		84.369	\$200,000
2014	3311101000	ED00000449	873100	70899000	25000			\$1,732,250
2014	3313600000	ED00000039	644000	70899000	25000		84.027	\$11,000
2014	3310300000	ED00000539	847500	70899000	25000		84.369	\$200,000
2015	3311101000	ED00000449	873100	70899000	25000			\$1,244,000
2015	3313600000	ED00000039	644000	70899000	25000		84.027	\$11,000
2015	3310300000	ED00000539	847500	70899000	25000		84.369	\$200,000
<b>TOTAL</b>								<b>\$9,716,250</b>

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF EDUCATION  
AND  
SAS INSTITUTE, INC.**

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and SAS Institute, Inc., hereinafter referred to as the "Contractor," is for the provision of research and reporting services related to data analysis of state assessments, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation..

Contractor Federal Employer Identification or Social Security Number: V561133017-00

Contractor Place of Incorporation or Organization: SAS Campus Drive, Cary, NC 27513

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall work with the State to provide analysis, reporting and research services related to State Assessment data. The State's assessment programs are designed to be valid and accessible for use by the widest possible range of students, including but not limited to students with disabilities and students with limited English proficiency. The Contractor will provide research and data analysis for assessments required under the Title I requirements of the Elementary and Secondary Education Act of 1965 (ESEA), the Individuals with Disabilities Education Act (IDEA), the No Child Left Behind Act of 2001 (NCLB); Tennessee Code Annotated; and State Board Policy as specified in Section A.5.a. All deliverables shall be reviewed and/or revised annually or by administration as needed to meet Federal and State guidelines. Unless otherwise indicated, all requirements of this Contract shall apply to all assessments.

**A.3 Definitions**

- a. Adequate Yearly Progress (AYP) – projections used to ensure students meet a high standard of proficiency in Reading/Language Arts and Math as required by NCLB.
- b. Analytical Services – Services provided by the Contractor to ensure the technical soundness of assessments. Such services may include, but are not limited to, the selection of representative samples of Tennessee students, conducting pilot studies, scaling of items and test forms, scale/item parameter drift studies, item bias/differential item functioning (DIF) analysis, setting of performance standards, and demonstration of test reliability and validity.
- c. Assessment – An evaluation of student achievement related to knowledge and skills in a specific content area.
- d. Calibration – Placing items on a common scale so that items measuring the same underlying content represent a position on the scale that is also represented by other items of comparable difficulty.
- e. Comparability and Equating – Statistical evidence that the Assessment is similar in content and psychometric characteristics to the current assessment.
- f. Criterion-Referenced Test (CRT) – An assessment aligned to pre-defined content standards and designed to measure student achievement relative to those standards.
- g. Fiscal Year (FY) - The State accounting period of July 1 through June 30.
- h. Local Education Agency (LEA) – A school district or school system that is the financial and administrative agency for school(s) in a certain region of the State.

- i. N-Counts – Total number of students.
- j. Online Applications – Web-based products as defined in section A.7 and A.7.d
- k. No Child Left Behind Act (NCLB) – Federal Legislation related to Education, provides for mandated CRT assessments.
- l. Scientific validity and empirical standards –the assessment shall meet the criteria for test development, administration, and use described in the *Standards for Educational and Psychological Testing* (1999) adopted by the American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME).  
  
[www.apa.org/science/standards.html](http://www.apa.org/science/standards.html)  
  
[www.apa.org/science/testing.html](http://www.apa.org/science/testing.html)
- m. Standards and Assessment Peer Review by the Office of Student Achievement and School Accountability of the U.S. Department of Education – Specific federal compliance requirements for the appropriateness of assessments used by states.  
<http://www.ed.gov/admins/lead/account/saa.html#peerreview>
- n. State Assigned Student ID Number – Student identification number randomly generated from the statewide student management system.
- o. State Special Schools – A school that is managed by the State. Summary data for State Special Schools is included with public schools. Current schools include but are not limited to: Alvin C. York Institute, Tennessee Governor's Academy, Tennessee School for the Blind, Tennessee School for the Deaf, West Tennessee School for the Deaf, and Department of Children's Services.
- p. Student Identification System (SSID) – A secure system for providing individual student identification numbers as required by TCA 49-6-5105.
- q. TCA – Tennessee Code Annotated.
- r. TCAP – Tennessee Comprehensive Assessment Program.
- s. TCAP/ACH - Achievement Assessment mandatory for grades 3-8 and optional for grades K-2.
- t. TCAP / Alt-PA – Alternative Portfolio Assessment.
- u. TCAP Assessments – Used to identify all State assessments as a group.
- v. TCAP / CRA – Constructed Response Assessment, administered in grades 4 and 7.
- w. TCAP / ELSA – English Linguistically Simplified Assessment for grades 3-8.
- x. TCAP / EOC – End of Course Assessments.
- y. TCAP EOC/ ELSA – English Linguistically Simplified Assessment.
- z. TCAP EOC / MAAS – Modified Academic Achievement Standards Assessment.
- aa. TCAP / GW – Gateway Assessments.
- bb. TCAP / HSAS – Holistically Scored Assessment System, used to identify the assessments provided in this contract as a group.
- cc. TCAP / MAAS – Modified Academic Achievement Standards Assessment for grades 3-8.
- dd. TCAP / WA - Writing Assessment, administered in grades 5, 8, and 11.
- ee. Teacher Advancement Program (TAP) – comprehensive, systemic reform model designed to address the challenges of K-12 education which includes strategies to attract, retain, develop and motivate talented people to the teaching profession.

- ff. Tennessee Value-Added Assessment System (TVAAS) - One component of the State accountability program that utilizes a statistical methodology to measure student achievement gains.
- gg. Test Year (TY) - The test administration period from July 1 through June 30. Final reporting for the test year may extend into the following test year.
- hh. Validity and Reliability Requirements – Statistical and psychometrical evidence that the Assessment consistently measures the standards and determines level of proficiency.
- ii. Web-Based – Delivered via the Internet World Wide Web.

#### A.4. Schedule

The State shall approve all materials and/or deliverables developed under this Contract. The Contractor shall not disseminate any written information, materials, or deliverables to the LEAs, public, or any other third party without the State's written approval. The Contractor shall allow the State a minimum of five (5) days to review materials and/or deliverables. If necessary, the Contractor shall make modifications as directed by the State and provide additional time of not less than three (3) days for the State to review and sign-off on the revised submission. The Contractor is responsible for any costs associated with making modifications to materials and deliverables necessary to obtain the State's approval at no cost to the State.

The Contractor shall provide the deliverables under this Contract in accordance with the delivery schedule stated below:

- a. Annual Work Plan – To include all activities related to each test administration. Final due 30 days after the Contract is executed and May 1 thereafter. The initial Annual Work Plan shall cover the period from the execution of the Contract through June 30, 2010. Each subsequent Annual Work Plan shall be due to the State by May 1 or following business day, each year and shall cover the period July 1 through June 30 for that test year. The last Annual Work Plan (due May 1, 2015) shall cover the period from July 1, 2015 through the end of the Contract December 31, 2015.
- b. TVAAS Support
  - i. Deliverable 1 Due July 31, 2010
  - ii. Deliverable 2 Due July 31, 2010
  - iii. Deliverable 3 Due August 31, 2010
  - iv. Deliverable 4 Due August 31, 2010
  - v. Deliverable 5 Due August 31, 2010
  - vi. Deliverable 6 Due September 30, 2010
  - vii. Deliverable 7 Due September 30, 2010
  - viii. Deliverable 8 Due September 30, 2010
  - ix. Deliverable 9 Due September 30, 2010
  - x. Deliverable 10 Due September 30, 2010
  - xi. Deliverable 11 Due October 31, 2010
  - xii. Deliverable 12 Due October 31, 2010
- c. Student Projections
  - i. Deliverable 13 Due September 30, 2010
  - ii. Deliverable 14 Due September 30, 2010
  - iii. Deliverable 15 Due September 30, 2010

- |      |                         |                                   |
|------|-------------------------|-----------------------------------|
| iv.  | Deliverable 16          | Due September 30, 2010            |
| v.   | Deliverable 17          | Due September 30, 2010            |
| vi.  | Deliverable 18          | Due September 30, 2010            |
| vii. | Deliverable 19          | Due September 30, 2010            |
| d.   | AYP Reporting for NCLB  |                                   |
| i.   | Deliverable 20          | Due August 31, 2010               |
| ii.  | Deliverable 21          | Due August 31, 2010               |
| iii. | Deliverable 22          | Due August 31, 2010               |
| iv.  | Deliverable 23          | Due August 31, 2010               |
| v.   | Deliverable 24          | Due August 31, 2010               |
| vi.  | Deliverable 25          | Due August 31, 2010               |
| vii. | Deliverable 26          | Due August 31, 2010               |
| e.   | Website, Deliverable 27 | Delivered monthly                 |
| f.   | Deliverable 28          | Due as needed throughout the year |
| g.   | Deliverable 29          | Delivered monthly                 |
| h.   | Deliverable 30          | Due as needed throughout the year |

#### A.5. **General Scope of Assessment Services**

- a. The Contractor shall work with the State to provide data analysis and support of the TVAAS system in accordance with TCA 49-1-211, 49-1-302, 49-1-601, 49-1-602, 49-1-604, 49-1-607, 49-1-613, 49-2-303, and 49-6-3050.
- b. The Contractor shall work with the State to adhere to any changes in Federal or State Legislation, Rule or Policy. Such work shall include but not be limited to any documents, papers, or records requested by the State or the United States Department of Education for review and audit purposes.
- c. The Contractor shall provide analysis and research to ensure that all mandated assessments meet the requirements of federal legislation including but not limited to ESEA, IDEA, and NCLB as specified in A.2.
- d. The Contractor shall provide analysis and research to ensure that all mandated assessments meet the requirements of TCA, and State Board of Education Policies.
- e. Maintaining test validity, reliability, and equivalent forms across years is a fundamental priority of the program. The Contractor is required to provide human resources and technology needed to review TCAP, including but not limited to TCAP Achievement, TCAP MAAS, TCAP Writing, TCAP Portfolio, and TCAP EOC according to State standards.

#### A.6. **Administration Activities:**

The Contractor shall provide data analysis services for all public and state special schools beginning in 2009-2010 (TY10).

- a. **Annual Work Plan** - The Contractor shall prepare, for State approval, a detailed Work Plan for each test year that incorporates the development schedules for the activities of this contract. The initial Work Plan shall be submitted within thirty (30) days after executing the contract. The Work Plan shall include the steps for all project work tasks and deliverables including initiation and completion dates, and task responsibilities to avoid any disruption of services, requirements or deliverables to the students, teachers, schools, LEAs, and State.

The Annual Work Plan will outline by task and due date each activity to be performed under

this contract following the deliverable timelines established in A.4. It is understood that all deliverables for research and analysis are contingent upon the delivery of clean data from the State and/or assessment vendors. Dates are subject to review and change based upon the delivery of clean data, changes in State and/or Federal reporting deadlines, and changes in State Education Policies. The Annual Work Plan must describe all activities related to the support services, research, analysis, and online reporting, including each stage of production. It shall provide due dates for each activity and indicate areas of responsibility for the Contractor and the State. The Annual Work Plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled. The Annual Work Plan shall be updated annually with State approval for the duration of the contract.

The Contractor shall establish secure sharepoint or file transfer protocol (FTP) websites for use in maintaining the Annual Work Plan and other communications, including but not limited to posting file layouts, research data, and analysis documentation for review, with the State for contract management. Materials shall be considered delivered and final after written notification is given to the Contractor via email or other electronic methods by the State contact in E.2 or their official designee. The Annual Work Plan shall be delivered in Microsoft Project and shall be maintained as a fluid, ongoing project document for each test year. Both the State and the Contractor shall have access to and the ability to edit and update the Annual Work Plan as needed. All changes must be approved by the State.

The Contractor shall provide each year the facility, transportation, food, and lodging for an Annual Work Plan review between the representatives of the State and the Contractor for planning, research projects, and report approval, as needed. State representatives in consultation with the Contractor shall make selection of the meeting site and dates. Meeting participants shall include the key project staff including project coordinators and their supervisors from both organizations.

- b. **Security Procedures** – The Contractor shall provide detailed, standardized security procedures for review and approval by the State. Approved security procedures shall be included in the annual work plan. The procedures must:
  - i. Comply with State of Tennessee Test Security Law, T.C.A. 49-1-607.
  - ii. Include test security procedures in the production, distribution, and collection of all test data.
  - iii. Provide a secure architecture to protect data analysis and reporting environments from network-based attacks.
  - iv. Provide security procedures and safeguards to ensure that electronic files and data are developed, used, and maintained in a secure manner to protect the confidentiality of all students tested, including all student and teacher records, reports, and files.
  - v. Include test security procedures for all student demographic data during analysis and reporting.
  - vi. Utilize encryption to ensure security of the data and all student/teacher/school/system information entered through all online programs.
  - vii. Provide and pay for any experts needed should these matters be litigated.
  - viii. The Contractor must not make contact with the press or LEAs in regard to data analysis, reports, results, or procedures. Any contact with the press and LEAs shall be handled through the State.
- c. **Error Correction** - The Contractor is responsible for correcting any errors in work products at the Contractor's expense, arising from activities that are the responsibility of the Contractor including but not limited to print errors and program functions. Such corrections may involve activities that include but are not limited to the following:
  - i. Conduct analyses to identify the cause and extent of errors.
  - ii. Edit, revise, and/or reprogram online applications.

- iii. Reprint and/or reproduce products or other materials.
- iv. Provide additional training to Contractor support staff, State staff and LEA personnel as needed via training materials, webinars, and or regional meetings.
- v. Replace and/or correct data files.
- vi. Reproduce reports.
- vii. Ship replacement products or reports to the State or systems using expedited shipping services.
- viii. Purchase of additional equipment (i.e., servers and/or dedicated data circuits).

**A.7. Data Analysis and Research Activities:**

- a. The Contractor shall provide the capability to support the Tennessee Value-Added Assessment System (TVAAS) through the delivery of the following services. A part of the In Kind discussed in E.19. is included in Deliverables 1-12.
  - i. **DELIVERABLE 1.** Re-evaluate customer environment to modify for current year processing to accommodate the State's addition of future mandated test administrations, as well as any necessary changes in data formats and codes definitions of existing tests.
  - ii. **DELIVERABLE 2.** Analyze raw test scores as necessary to ensure equated forms from previous years. The Contractor shall notify the State regarding results of analyses with any recommendations for any adjustment to scales for maintenance of consistency in equating test forms with previous years.
  - iii. **DELIVERABLE 3.** Maintain existing software to accommodate the State's delivery of student-teacher linkages.
  - iv. **DELIVERABLE 4.** Analyze student-teacher linkages as necessary to determine whether the State's recommended percentages of students per tested subject per school per district are linked to teachers. Discrepancies between recommended percentages and data supplied will be reported to the State's Office of Assessment, Evaluation and Research.
  - v. **DELIVERABLE 5.** Enable the estimation of teacher effects based upon the data generated by state-mandated tests administered in grades 3-8, High School Gateways, High School End of Course or other state-mandated tests with scales that meet the criteria to enable such analyses.
  - vi. **DELIVERABLE 6.** Refine and apply filters to identify potential breaches of protocol that challenge data integrity.
  - vii. **DELIVERABLE 7.** Report the results of the TVAAS teacher level analyses via secure-access web delivered print images or PDF batch delivery. Method of reporting will be determined in consideration of the Contractor's capacity to authenticate teacher access from files delivered by the State.
  - viii. **DELIVERABLE 8.** Enable the estimation of system effects based upon the data generated by state-mandated tests administered in grades 3-8, Secondary Assessments, the Writing Assessment, measures of college readiness or other state-mandated tests with scales that meet the criteria to enable such analyses.



- ix. **DELIVERABLE 9.** Enable the estimation of school effects based upon the data generated by state-mandated tests administered in grades 3-8, Secondary Assessments, the Writing Assessment, measures of college readiness or other state-mandated tests with scales that meet the criteria to enable such analyses.
  - x. **DELIVERABLE 10.** Integrate student demographic files with the TVAAS school level results to provide public and restricted query options of TVAAS school level results.
  - xi. **DELIVERABLE 11.** Report via a publicly available website the results of TVAAS system analyses.
  - xii. **DELIVERABLE 12.** Report the results of the TVAAS school analyses via a publicly available website.
- b. The Contractor shall provide the capacity to deliver the individual student projections reported via the TVAAS restricted website and the analyses results mandated by Tennessee's Growth Model augmentation to NCLB AYP calculations. Other projections determined by the State to be useful could be added to the website.
- i. **DELIVERABLE 13.** Students with sufficient data available will receive reports of trajectories to tests administered in next grade. These student level reports will be delivered as a part of the reporting available at the TVAAS restricted website.
  - ii. **DELIVERABLE 14.** Students in grades 3-5 with sufficient data available will receive reports of trajectories to the subject tests administered 3 grades in the future. These student level reports will be delivered as a part of the reporting available at the TVAAS restricted website. The math and reading/language trajectories become their student level metrics in the Tennessee Growth Model.
  - iii. **DELIVERABLE 15.** Students in grades 3-8 with sufficient data available will receive reports of trajectories to Secondary EOC subjects. These student level reports will be delivered as a part of the reporting available at the TVAAS restricted website. The EOC Algebra, EOC English II, and other content areas as requested by the State, trajectories for students in grades 6-8 become their student level metrics in the Tennessee Growth Model.
  - iv. **DELIVERABLE 16.** Students in the grade prior to any State mandated Writing Assessment Administration will receive reports of trajectories to the levels of proficiency defined for the Writing Assessment. These student level reports will be delivered as a part of the reporting available at the TVAAS restricted website.
  - v. **DELIVERABLE 17.** Students in grades 3-8 and students with high school tests administered in the most recent year with sufficient data available will receive reports of trajectories to ACT Composite as well as to individual ACT Subject Specific Tests. These student level reports will be delivered as a part of the reporting available at the TVAAS restricted website.
  - vi. **DELIVERABLE 18.** Students in grades 3-7 will receive reports of trajectories to ACT EXPLORE Composite as well as to individual EXPLORE Subject Specific Tests. These

student level reports will be delivered as a part of the reporting available at the TVAAS restricted website.

- vii. **DELIVERABLE 19.** Students in grades 3-9 will receive reports of trajectories to ACT PLAN Composite as well as to individual PLAN Subject Specific Tests. These student level reports will be delivered as a part of the reporting available at the TVAAS restricted website.
- c. Analyses to support the AYP reporting required by NCLB.
  - i. **DELIVERABLE 20.** Re-evaluate customer environment to modify for current year processing, including the accommodation of changes required by the State to implement Amendments to the AYP Accountability Workbook.
  - ii. **DELIVERABLE 21.** Update of AYP datasets to identify closed/new schools, special situations of reporting (e.g., contracted special education services) and to include the previous year's System and School AYP Status.
  - iii. **DELIVERABLE 22.** Analyze graduation and attendance files to determine completeness prior to AYP calculations.
  - iv. **DELIVERABLE 23.** Provide AYP calculation for a given calendar year, once all test results from the previous school year's testing are available and usable for analyses.
  - v. **DELIVERABLE 24.** Assess and monitor the State's percentage of students taking portfolio or alternative assessments as AYP measures. Reassign sufficient students' tested proficiency on these assessments to bring the State into compliance with federal guidelines.
  - vi. **DELIVERABLE 25.** Report to the State in the formats specified in the AYP Calculations Technical Manual the performance of the State, the individual Systems and the individual Schools within Systems on the NCLB performance for the most recent test administrations.
  - vii. **DELIVERABLE 26.** Rerun AYP calculations to accommodate the appeals authorized by the State of system or schools' status.
- d. **DELIVERABLE 27.** Report and maintain a restricted TVAAS website for educational practitioners that include the following results. A portion of the costs for this deliverable are included in the In Kind referenced in E.19;
  - i. System level TVAAS reports.
  - ii. System level TVAAS diagnostic reports.
  - iii. System level TVAAS performance diagnostic reports.
  - iv. School level TVAAS reports.
  - v. School level TVAAS diagnostic reports.
  - vi. School level TVAAS performance diagnostic reports.
  - vii. Student level reporting to include testing history as well as individual student projections outline in 2. Above.
  - viii. Query functionality to identify schools with comparable student demographics.
  - ix. System Value-Added Summaries
  - x. System Diagnostic Summaries

- xi. System Performance Diagnostic Summaries
- e. **DELIVERABLE 28.** The Contractor shall provide the following research related deliverables.
  - i. The Contractor shall conduct research studies for up to 90 days. The studies shall provide rigorous statistical analyses for research questions, defined by the Department, which will aid in the determination of effective policies and practices to facilitate improved rates of academic progress for Tennessee's students. This deliverable represents a portion of the In Kind Contribution as defined in Section E.19.
  - ii. The Contractor shall work with the State to revise reporting of data delivered when errors occur and are undetected in the raw data files.
  - iii. The Contractor shall design, analyze and delivery a trend analysis every 3 years, beginning in the current calendar year. This analysis shall utilize the existing Tennessee achievement test database to generate trend lines from which determination can be made regarding the change (or lack thereof) in achievement levels by grade and subject area covering the period 1991-through the most recently administered 3-8 tests, as well as other analyses necessary to identify impediments and accelerators of student academic growth. The analyses shall provide data at the state, system and school level.
- f. **DELIVERABLE 29.** The Contractors shall provide technical and reporting services as follows:
  - i. Develop the technical infrastructure to deliver TVAAS teacher reporting in a secure environment consistent with T.C.A.
  - ii. Develop and deliver diagnostic supplements to the TVAAS teacher reports.
  - iii. Design professional development activities to empower Highly Effective Teaching through the use of the TVAAS restricted website metrics and a teacher's official TVAAS report.
  - iv. Develop state, system and school TVAAS summaries of effective teaching consistent with federal reporting requirements.
- g. **DELIVERABLE 30.** The Contractor shall provide the following additional services.
  - i. To support the State's SSID process and to re-roster students according to enrolled school, the Contractor will provide the following updates to the TVAAS restricted website.
    - (a.) Re-roster student level records according to System reported enrolled schools.  
Timeline to be established through mutual agreement of State and Contractor, given the requirements of Systems and Schools to submit Improvement Plans.
    - (b.) System automated queries to State Specification to identify students' likelihood of meeting the next year's proficiency in tested subjects.
  - ii. The Contractor shall conduct reviews and analyses of the TCAP CRT tests and provide results achievement results and value-added results for inclusion in the State Report Card. These services are considered In Kind Contributions as defined in Section E.19 of the contract.
  - iii. The Contractor shall conduct additional research studies to deliver the Higher Education Report Cards files to populate the State Department of Education website reporting on the effectiveness of teachers prepared in colleges of education in the State. Any changes to file formatting during this contract may be subject to additional charges at the research rate established for Deliverable 28. This deliverable is a part of the In Kind Contribution as defined in Section E.19.
  - iv. The Contractor shall provide appropriate teacher level report formatting as well as payroll detail for Teacher Advancement Program (TAP) payouts directly to the Systems with

TAP schools. This deliverable is a part of the In Kind Contribution as defined in Section E.19.

- v. The Contractor shall provide sufficient mapping support to accommodate the transfer to the State's SSID numerical identifiers for students and teachers. This deliverable is a part of the In Kind Contribution as defined in Section E.19.
- vi. The Contractor shall design, analyze and deliver a trend analysis every 3 years, beginning in the current calendar year. This analysis shall utilize the existing Tennessee achievement test database to generate trend lines from which determination can be made regarding the change (or lack thereof) in achievement levels by grade and subject area covering the period 1991-through the most recently administered 3-8 tests, as well as other analyses necessary to identify impediments and accelerators of student academic growth. The analyses shall provide data at the state, system and school level.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on January 1, 2010 and ending on December 31, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Nine Million Seven Hundred Sixteen Thousand Two Hundred Fifty Dollars and No Cents (\$9,716,250.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

	Amount
Service Description	(per compensable increment)

Service Description	Amount	
	(per compensable increment)	
Deliverable 1	\$25,000	per year
Deliverable 2	\$15,000	per year
Deliverable 3	\$10,000	per year
Deliverable 4	\$10,000	per year
Deliverable 5	\$200,000	per year
Deliverable 6	\$10,000	per year
Deliverable 7	\$15,000	per year
Deliverable 8	\$200,000	per year
Deliverable 9	\$200,000	per year
Deliverable 10	\$5,000	per year
Deliverable 11	\$10,000	per year
Deliverable 12	\$10,000	per year
Deliverable 13	\$30,000	per year
Deliverable 14	\$30,000	per year
Deliverable 15	\$30,000	per year
Deliverable 16	\$30,000	per year
Deliverable 17	\$30,000	per year
Deliverable 18	\$30,000	per year
Deliverable 19	\$30,000	per year
Deliverable 20	\$15,000	per year
Deliverable 21	\$10,000	per year
Deliverable 22	\$5,000	per year

Service Description	Amount	
	(per compensable increment)	
Deliverable 23	\$120,000	per year
Deliverable 24	\$11,000	per year
Deliverable 25	\$20,000	per year
Deliverable 26	\$30,000	per year
Deliverable 27	\$29,000	per month
Deliverable 28	\$1,825	per day as completed
Deliverable 29	\$25,000	per month
Deliverable 30	\$0	In-Kind

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Deborah Malone  
Department of Education  
Assessment, Evaluation, and Research  
1252 Foster Ave.  
TPS Campus, Hardison Building  
Nashville, TN 37243  
deb.malone@tn.gov

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Education, Assessment, Evaluation & Research;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);

- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
  - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
  - iii. Detail of specific delivered service to include but not be limited to:
    - (a) person performing the service
    - (b) specific project programming information actual hour breakdown
  - iv. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
  - v. Amount Due by Service; and
  - vi. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

#### **D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of



this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Dan Long, Executive Director  
DEPARTMENT OF EDUCATION  
Assessment, Evaluation and Research  
TPS Campus, Hardison Building  
1252 Foster Ave.  
Nashville, TN 37210  
email address: [dan.long@tn.gov](mailto:dan.long@tn.gov)  
Telephone #: 615-741-0720  
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The Contractor:

Dr. June Rivers, Manager  
Value-Added Assessment & Research Services  
Sas Institute, Inc.  
720 SAS Campuses Drive, U-4114  
Cary, NC 27513  
[June.Rivers@sas.com](mailto:June.Rivers@sas.com)  
Telephone # 919-531-1075  
FAX #

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP

severance payment or the spouse of such an individual holds a controlling financial interest.

- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
  - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
  - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the

confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.8. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.9. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." Work Product shall include all test items and prompts drafted, completed work as well as unedited items, rejected items, items under revision, test forms, all psychometric characteristics, including item parameters, and any other materials which may be prepared under this contract. The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
  - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
  - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
  - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

- E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.12. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.14. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
  - partial performance of any term or provision of the Contract;
  - any act prohibited or restricted by the Contract, or
  - violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
  - (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment B and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable

estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said

written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.15. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.16. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment C.
- E.17. Software Development. It is expressly understood that the contracted services will not require the development of new software or modification of existing software and that the only work products under this contract are reports. Contractor and agrees that all data supplied by the State pursuant to this Contract remains the property of the State in all forms. Contractor shall obtain written permission of the Commissioner of Education prior to the use of such data other than the fulfillment of Contractor's obligations under this Contract.
- E.18. Web Site Related. The State acknowledges it is solely responsible for, and maintains complete ownership of, the data used by the Contractor for display on the web site and for notifying the Contractor of specific assigned levels of public and restricted access authority to be granted on the web site. If the Contractor is not in default under the terms of Deliverable 27 of the Scope of Services section A.6.d, the State acknowledges it is solely responsible for damages, costs and expenses incurred by the Contractor relating to claims by any third party against the Contractor arising out of the performance of its obligations under Deliverable 27 of the Scope of Services section A.6.d. It is agreed by both parties that upon given immediate notice by the Contractor, the Contractor reserves the right to terminate the Contract without penalty, if the Contractor's obligations hereunder will violate any applicable U.S. law or regulation.
- E.19. Regarding In Kind Contributions. The Contractor accepts the limitation of the service rates detailed in Section C.3, but stresses to the State that its costs associated with delivering the contracted services are considerably higher and the Contractor is absorbing these



uncompensated costs in its operation as a contribution toward the success of the TVAAS program.

IN WITNESS WHEREOF,

SAS, INC.:

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CONTRACTOR SIGNATURE

DATE

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PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION:

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TIMOTHY K. WEBB, COMMISSIONER

DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	SAS, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	V561133017-00

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

**ATTACHMENT B**  
**LIQUIDATED DAMAGES**

<b>Service Description</b>	<b>Liquidated Damages</b>
Deliverable 1	\$2,500
Deliverable 2	\$1,500
Deliverable 3	\$1,000
Deliverable 4	\$1,000
Deliverable 5	\$20,000
Deliverable 6	\$1,000
Deliverable 7	\$1,500
Deliverable 8	\$20,000
Deliverable 9	\$20,000
Deliverable 10	\$500
Deliverable 11	\$1,000
Deliverable 12	\$1,000
Deliverable 13	\$3,000
Deliverable 14	\$3,000
Deliverable 15	\$3,000
Deliverable 16	\$3,000
Deliverable 17	\$3,000
Deliverable 18	\$3,000
Deliverable 19	\$3,000
Deliverable 20	\$1,500
Deliverable 21	\$1,000
Deliverable 22	\$500

<b>Service Description</b>	<b>Liquidated Damages</b>
Deliverable 23	\$12,000
Deliverable 24	\$1,100
Deliverable 25	\$2,000
Deliverable 26	\$3,000
Deliverable 27	\$2,900
Deliverable 28	\$183
Deliverable 29	\$2,500
Deliverable 30	\$0

**ATTACHMENT C**

**AUTHORIZATION AND ACKNOWLEDGEMENT OF COMPLIANCE**

**Whereas**, State has contracted with SAS, Inc. from January 1, 2010 through December 31, 2015 (RFS # 33111-00210), for research and reporting services related to data analysis of state assessments, and

**Whereas**, The above referenced contract may require the disclosure by the State to SAS, Inc. of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act (FERPA), and

**Whereas**, 34 C.F.R. 99.31 and 34 C.F.R. 99.35, authorize an educational agency or institution to disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 to authorized representatives of State and local educational authorities in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

Therefore, the State and SAS, Inc. hereby agree as follows:

1. SAS, Inc. is authorized to maintain certain student information for the sole purpose of compliance with the requirements of the above referenced contract. This student information may include: name, social security number, unique student id, achievement data, all demographic data collected on student response documents, and any other data provided by the State.
2. SAS, Inc. as authorized representative of State for the sole purpose of complying with the requirements of the above contract agrees to comply fully with FERPA by maintaining the confidentiality of all student information and to use the information solely to fulfill its obligations under the above referenced contract with the state.
3. SAS, Inc. agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

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State

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Date

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SAS, Inc.

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Date

<b>FA CONTRACT INFORMATION SUPPLEMENT</b> FOR ALL FA-TYPE CONTRACTS — COMPLETE <u>EITHER</u> SECTION A <u>OR</u> SECTION B	
<b>Contract RFS #</b>	33111-00210
<b>Contractor:</b>	SAS, Inc.
<b>SECTION A— CONTRACTOR IS AN INDIVIDUAL</b>	<b>SECTION B— CONTRACTOR IS A COMPANY</b> (e.g., sole proprietorship, partnership, or corporation)
<b>Is or has the contractor been a state employee?</b>  <input type="checkbox"/> <b>NO</b> (no additional information required) <input type="checkbox"/> <b>YES</b>	<b>Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?</b>  <input type="checkbox"/> <b>NO</b> (no additional information required) <input type="checkbox"/> <b>YES</b>
<b>Was such employment within the past six months?</b>  <input type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> (an approved rule exception permitting a contract within six months of employment is also required)	<b>Was such employment within the past six months?</b>  <input type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> (an approved rule exception permitting a contract within six months of employment is also required)
<b>Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?</b>  <input type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> (the procuring agency general counsel <i>MUST</i> sign an analysis of this procurement using the TCRS analysis guidelines)	<b>Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?</b>  <input type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> (the procuring agency general counsel <i>MUST</i> sign an analysis of this procurement using the TCRS analysis guidelines)
<b>CONTRACTOR SIGNATURE</b>	
<b>CONTRACTOR</b>	<b>DATE</b>